

## § 2.101

## 37 CFR Ch. I (7–1–06 Edition)

(h) The Trademark Trial and Appeal Board will consider and determine concurrent use rights only in the context of a concurrent use registration proceeding.

[48 FR 23135, May 23, 1983; 48 FR 27225, 27226, June 14, 1983, as amended at 54 FR 37596, Sept. 11, 1989]

### OPPOSITION

AUTHORITY: Secs. 2.101 to 2.106 also issued under secs. 13, 17, 60 Stat. 433, 434; 15 U.S.C. 1063, 1067.

#### § 2.101 Filing an opposition.

(a) An opposition proceeding is commenced by filing a timely opposition, together with the required fee, in the Office.

(b) Any person who believes that he, she or it would be damaged by the registration of a mark on the Principal Register may file an opposition addressed to the Trademark Trial and Appeal Board. The opposition need not be verified, but must be signed by the opposer or the opposer's attorney, as specified in § 10.1(c) of this chapter, or other authorized representative, as specified in § 10.14(b) of this chapter. Electronic signatures pursuant to § 2.193(c)(1)(iii) are required for oppositions submitted electronically under paragraphs (b)(1) or (2) of this section.

(1) An opposition to an application based on section 1 or 44 of the Act must be filed either on paper or through ESTTA.

(2) An opposition to an application based on section 66(a) of the Act must be filed through ESTTA.

(c) The opposition must be filed within thirty days after publication (§ 2.80) of the application being opposed or within an extension of time (§ 2.102) for filing an opposition.

(d)(1) The opposition must be accompanied by the required fee for each party joined as opposer for each class in the application for which registration is opposed (*see* § 2.6).

(2) An otherwise timely opposition will not be accepted via ESTTA unless the opposition is accompanied by a fee that is sufficient to pay in full for each named party opposer to oppose the registration of a mark in each class specified in the opposition.

(3) If an otherwise timely opposition is submitted on paper, the following is applicable if less than all required fees are submitted:

(i) If the opposition is accompanied by no fee or a fee insufficient to pay for one person to oppose the registration of a mark in at least one class, the opposition will be refused.

(ii) If the opposition is accompanied by fees sufficient to pay for one person to oppose registration in at least one class, but fees are insufficient to oppose registration in all the classes in the application, and the particular class or classes against which the opposition is filed is not specified, the opposition will be presumed to be against the class or classes in ascending numerical order, including only the number of classes in the application for which sufficient fees have been submitted.

(iii) If persons are joined as party opposers, each must submit a fee for each class for which opposition is sought. If the fees submitted are sufficient to pay for one person to oppose registration in at least one class, but are insufficient for each named party opposer, the first-named party will be presumed to be the party opposer. Additional parties will be deemed to be party opposers only to the extent that the fees submitted are sufficient to pay the fee due for each party opposer. If persons are joined as party opposers against a multiple class application, the fees submitted are insufficient, and no specification of opposers and classes is made at the time the party is joined, the fees submitted will be applied first on behalf of the first-named opposer against as many of the classes in the application as the submitted fees are sufficient to pay. Any excess will be applied on behalf of the second-named party to the opposition against the classes in the application in ascending numerical order.

(4) The filing date of an opposition is the date of receipt in the Office of the opposition together with the required fee.

[68 FR 55765, Sept. 26, 2003]